

**** Bill No. ****

Introduced By The Department of Labor and Industry

By Request of *****

A Bill for an Act entitled: "An Act Revising Professional and Occupational Licensing Laws; amending the definition of "license" in two places; amending the duties of boards; adding "naturopathic physician" and "physician assistant" to definitions relating to nursing; deleting a requirement for verification by oath in two places; deleting certain requirements relating to licensure of optometrists; requiring the department instead of a board to provide application forms for speech-language pathologists and audiologists; deleting authorization for the department to extend temporary licensure of hearing aid dispenser trainees; amending veterinary license and certificate display requirements; amending rule-making authority of the board of alternative health care; amending temporary licensure provisions relating to practitioners of naturopathic medicine; amending provisions relating to student respiratory care practitioners; amending categorization of narcotic drugs in two places; amending provisions relating to ambulatory surgical facilities; deleting reference to the department in requirements relating to presentence investigations; amending sections 37-1-130, 37-1-131, 37-1-302, 37-8-102, 37-8-405, 37-8-415, 37-10-302, 37-15-302, 37-16-405,

37-18-306, 37-26-201, 37-26-403, 37-28-201, 50-32-226, 50-32-232, 50-32-314, and 46-18-111, MCA; repealing section 37-1-331, MCA; amending realty regulation sections 2-15-1757, 37-51-102, 37-51-301, 37-51-302, NEW SECTION 25 to Title 37-Chapter 51, Part 3; amending section 76-2-411, MCA by deleting an obsolete definition no longer used by the Department of Public Health; amending fee distribution between the department of fish, wildlife, and parks and the board of outfitters; requiring the department to prepare and publish an information pamphlet; amending sections 37-47-318, and 37-47-341, MCA; changing the name of the Board of private security patrol officers and investigators to the Board of private security and changing the board's membership requirements; amending and adding definitions pertinent to Title 30, Chapter 60, MCA; amending and clarifying the purpose of Title 37, Chapter 60, MCA; amending the board's rulemaking power; amending licensure requirements; amending qualifying agent and resident manager provisions; amending licensure qualifications; amending licensure application form and content; amending the form of license identification cards; amending the requirements for display of license and identification cards; amending requirements relating to nontransferability of licenses; amending provisions pertaining to confidentiality of information, false reports, badges and uniforms, and illegal entry; and amending sections 2-15-1781, 37-60-101, 37-60-103, 37-60-202, 37-60-301, 37-60-302, 37-60-303, 37-60-304, 37-60-309, 37-60-310, 37-60-314, 37-60-315, 37-

60-402, 37-60-403, 37-60-406, and 37-60-409, MCA; repealing sections 37-60-315 and 37-60-406, MCA; defining Plumbing contractor@ and amending numbering of definitions relating to Title 37, Chapter 69, MCA; amending licensure of plumbers to include plumbing contractors, and prohibiting employment agencies and trade unions from referring unlicensed people to work in the plumbing industry; creating licensure application requirements for plumbing contractors; amending employment requirements for journeyman plumbers; amending license restrictions on master plumbers; amending restrictions on licenses issued to individuals on behalf of firms; amending restrictions and responsibilities for employers of master plumbers; amending elevator inspector licensure requirements; amending licensure requirements for operators of cranes or hoisting engines; creating emeritus licensure for architects; creating licensure, application, and fee requirements for plumbing contractors; creating retirement licensure for plumbers; establishing unprofessional conduct criteria in title 37, chapter 72, MCA; establishing unprofessional conduct criteria in title 37, chapter 73, MCA; establishing unprofessional criteria in title 50, chapter 39, MCA; establishing unprofessional conduct criteria in title 50, chapter 74, MCA; establishing unprofessional conduct criteria in title 50, chapter 76, MCA; amending sections 37-69-101, 37-69-301, 37-69-303, 37-69-304, 37-69-305, 37-69-306, 37-69-323, 37-73-208, and 50-76-102, MCA, repealing section 50-76-103, MCA;

and providing an effective date."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-1-130, MCA, is amended to read:

"37-1-130. Definitions. As used in this part, the following definitions apply:

(1) "Administrative fee" means a fee established by the department to cover the cost of administrative services as provided for in 37-1-134.

(2) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(3) "Board fee" means:

(a) a fee established by the board to cover program area costs as provided in 37-1-134; and

(b) any other legislatively prescribed fees specific to boards and department programs.

(4) "Department" means the department of labor and industry established in 2-15-1701.

(5) "Department program" means a program administered by the department pursuant to this title and not affiliated with a board.

(6) "Expired license" means a license that is not reactivated within the period of 45 days to 2 years after the

renewal date for the license.

(7) "Lapsed license" means a license that is not renewed by the renewal date and that may be reactivated within the first 45-day period after the renewal date for the license.

(8) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term, such as permit, certificate, recognition, or registration, used for the permission.

(9) "Terminated license" means a license that is not renewed or reactivated within 2 years of the license lapsing."

{*Internal references to 37-1-130: None* }

Section 2. Section 37-1-131, MCA, is amended to read:

"37-1-131. Duties of boards -- quorum required. A quorum of each board within the department shall:

(1) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board's jurisdiction;

(2) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board's jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

(3) suspend, revoke, or deny a license of a person who the

board determines, after a hearing as provided in subsection (2), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71;

(4) pay to the department the board's pro rata share of the assessed costs of the department under 37-1-101(6);

(5) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

(6) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

(7) The board or the department program may:

(a) establish the qualifications of applicants to take the licensure examination;

(b) determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination;

(c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations;

and

(d) require continuing education ~~and~~ or continued state, regional, or national certification for licensure as provided in 37-1-306. If the board or department requires continuing education or continued state, regional, or national certification for continued licensure, the board or department may not audit or ~~verify~~ require proof of continuing education or continued state, regional, or national certification requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits after the expiration date of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement after the renewal period closes. All licensees renewing an expired license will be required to submit proof of meeting the continuing education or the continued state, regional, or national certification requirements for the renewal cycle.

(8) A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board."

{Internal references to 37-1-131: None }

Section 3. Section 37-1-302, MCA, is amended to read:

"37-1-302. Definitions. As used in this part, the following definitions apply:

(1) "Board" means a licensing board created under Title 2,

chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(2) "Complaint" means a written allegation filed with a board that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(3) "Department" means the department of labor and industry.

(4) "Inspection" means the periodic examination of premises, equipment, or procedures or of a practitioner by the department to determine whether the practitioner's profession or occupation is being conducted in a manner consistent with the public health, safety, and welfare.

(5) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a written complaint or other information before a board, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the board;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether a board should seek an injunction.

(6) "License" means permission granted under a chapter of

this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term, such as permit, certificate, recognition, or registration, used for the permission.

(7) "Profession" or "occupation" means a profession or occupation regulated by a board."

{*Internal references to 37-1-302:*

37-1-138 x 37-35-301* x}

Section 4. Section 37-8-102, MCA, is amended to read:

"37-8-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advanced practice registered nurse" means a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, in addition to basic nursing education, as specified by the board pursuant to 37-8-202.

(2) "Board" means the board of nursing provided for in 2-15-1734.

(3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) "Medication aide" means a person who in an assisted living facility uses standardized procedures in the administration of drugs, as defined in 37-7-101, that are prescribed by a physician, an advanced practice registered nurse with prescriptive authority, a dentist, an osteopath, or a

podiatrist authorized by state law to prescribe drugs.

(5) "Nursing education program" means any board-approved school that prepares graduates for initial licensure under this chapter. Nursing education programs for:

(a) professional nursing may be a department, school, division, or other administrative unit in a junior college, college, or university;

(b) practical nursing may be a department, school, division, or other administrative unit in a vocational-technical institution or junior college.

(6) "Practice of nursing" embraces the practice of practical nursing and the practice of professional nursing.

(7) (a) "Practice of practical nursing" means the performance of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. The practice of practical nursing uses standardized procedures in the observation and care of the ill, injured, and infirm, in the maintenance of health, in action to safeguard life and health, and in the administration of medications and treatments prescribed by a physician, naturopathic physician, physician assistant, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, naturopathic physician, physician assistant, dentist, osteopath,

or podiatrist authorized by state law to prescribe medications and treatments.

(b) These services may include a charge-nurse capacity in a long-term care facility that provides skilled nursing care or intermediate nursing care, as defined in 50-5-101, under the general supervision of a registered nurse.

(8) "Practice of professional nursing" means the performance of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health, the prevention, case finding, and management of illness, injury, or infirmity, and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, naturopathic physicians, physician assistants, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (8):

(a) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may

include referral to medical or community resources;

(b) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals."

{Internal references to 37-8-102:

23-3-405 x 37-8-301 x}

Section 5. Section 37-8-405, MCA, is amended to read:

"37-8-405. Professional nursing -- qualifications of applicants for license. An applicant for a license to practice as a registered professional nurse shall submit to the department written evidence, ~~verified by oath,~~ that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) has completed the basic professional curriculum in an approved school of nursing and holds a diploma therefrom; and

(3) meets other qualification requirements the board prescribes."

{Internal references to 37-8-405: None }

Section 6. Section 37-8-415, MCA, is amended to read:

"37-8-415. Licensed practical nursing -- qualifications of applicants. An applicant for a license to practice as a licensed practical nurse shall submit to the board written evidence, ~~verified by oath,~~ that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) is a graduate of an approved practical nursing education program that is authorized to prepare persons for licensure as practical nurses; and

(3) meets other qualification requirements the board prescribes in its rules."

{Internal references to 37-8-415: None }

Section 7. Section 37-10-302, MCA, is amended to read:

"37-10-302. Qualifications -- application. (1) The board shall adopt rules relative to and governing the qualifications of applicants for licensure as optometrists.

(2) A person is not eligible to receive a license unless that person is ~~18 years of age or older and~~ of good moral character.

(3) A person is not eligible to receive a license unless that person has graduated from an accredited ~~high school and from a~~ school of optometry in which the practice and science of optometry is taught in a course of study that is accredited by the international association of boards of examiners in optometry.

(4) A person desiring a license shall file a completed application on a form provided by the department and pay a fee prescribed by the board."

{Internal references to 37-10-302:

37-10-304 x}

Section 8. Section 37-15-302, MCA, is amended to read:

"37-15-302. Application forms. Application for examination for licensing a speech-language pathologist or audiologist shall be made upon forms prescribed by the ~~board~~ department."

{Internal references to 37-15-302: None }

Section 9. Section 37-16-405, MCA, is amended to read:

"37-16-405. Trainee license. (1) An applicant who fulfills the requirements of 37-16-402 and who has not previously applied to take a practical examination may apply to the board for a trainee license.

(2) On receiving an application under subsection (1), accompanied by a fee fixed by the board and verification that the applicant has passed the written portion of the examination with a passing score as determined by board rule, the board shall issue a trainee license that entitles the applicant to engage in a 180-day training period during which the applicant:

(a) is required to pass the practical examination administered by the board before being issued a hearing aid dispenser's license; and

(b) shall work under the direct supervision of the sponsoring licensed hearing aid dispenser. During this time the applicant may do the testing necessary for proper selection and

fitting of hearing aids and related devices and make necessary impressions. However, the delivery and final fitting of the hearing aid and related devices must be made by the trainee and the supervisor.

(3) The training period must consist of a continuous 180-day term. Any break in training requires application for another trainee license under rules that the board may prescribe.

(4) A trainee license may not be issued unless the board has on file an unrevoked statement from a qualified licensed hearing aid dispenser accepting responsibility for the trainee. Every licensed hearing aid dispenser supervising a trainee license holder shall submit a report every 90 days of the trainee's activities and training assignments, on forms furnished by the board. The supervisor is responsible for all hearing aid fittings of the trainee. A supervisor may terminate any responsibilities to the trainee by mailing by certified mail written notice to the board and the trainee.

(5) If a person who holds a trainee license takes and fails to pass the practical examination ~~during the training period, the board may authorize the department to renew the trainee license for a period of 180 days, during which the provisions of subsection (2)(b) apply. More than one renewal is not permitted~~ trainee license expires and the person may not practice as a trainee.

(6) A person licensed as an audiologist under the provisions of Title 37, chapter 15, or a person practicing

pursuant to 37-1-305 is exempt from the 180-day training period but is required to pass the examinations prescribed in this chapter.

(7) A licensed hearing aid dispenser who sponsors a trainee is directly responsible and accountable under the disciplinary authority of the board for the conduct of the trainee as if the conduct were the licensee's own.

(8) For the purposes of this section, "direct supervision" means the direct and regular observation and instruction of a trainee by a licensed hearing aid dispenser who is available at the same location for prompt consultation and treatment."

{Internal references to 37-16-405:

37-16-202 x 37-16-202 x}

Section 10. Section 37-18-306, MCA, is amended to read:

"37-18-306. Display of license and certificate. A person may not practice veterinary medicine in this state without possessing and displaying prominently in his principal office a ~~license and a current and valid certificate of registration~~ license issued under this part."

{Internal references to 37-18-306: None }

Section 11. Section 37-26-201, MCA, is amended to read:

"37-26-201. Powers and duties of board. The board shall:

(1) adopt rules necessary or proper to administer and enforce this chapter;

(2) adopt rules that specify the scope of practice of naturopathic medicine stated in 37-26-301, that are consistent with the definition of naturopathic medicine provided in 37-26-103, and that are consistent with the education provided by approved naturopathic medical colleges;

(3) adopt rules that endorse equivalent licensure examinations of another state or territory of the United States, the District of Columbia, or a foreign country and that may include licensure by reciprocity;

(4) adopt rules that set nonrefundable fees for application, and licensure;

(5) approve naturopathic medical colleges as defined in 37-26-103;

(6) issue certificates of specialty practice;

(7) adopt rules that, in the discretion of the board, appropriately restrict licenses to a limited scope of practice of naturopathic medicine, which may exclude the use of minor surgery allowed under 37-26-301; and

(8) adopt rules that contain the natural substance formulary list created by the alternative health care formulary committee provided for in 37-26-301~~+~~. and

~~—— (9) adopt rules to implement the provisions in 37-1-138."~~

{Internal references to 37-26-201:

37-26-301 x}

Section 12. Section 37-26-403, MCA, is amended to read:

"37-26-403. Application for licensure -- examination -- temporary license. (1) A person who desires a license to practice naturopathic medicine in Montana shall apply to the department. The application must be accompanied by the license fees, the application fees, and the documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by 37-26-402. The burden of proof is on the applicant, but the department may make an independent investigation to determine whether the applicant possesses the necessary qualifications and whether the applicant has committed unprofessional conduct that would be a basis for licensure denial. At the board's request, the applicant shall provide necessary authorizations for the release of records and information pertinent to the department's investigation.

~~(2) A person who applies for licensure but who has not passed a licensure examination prescribed or endorsed by the board shall apply to the board for authorization to take the prescribed licensure examination. If the board finds that all other qualifications for licensure except that of examination have been met, the board shall authorize the applicant to take the licensure examination."~~

{Internal references to 37-26-403: None }

Section 13. Section 37-28-201, MCA, is amended to read:

"37-28-201. License required -- exceptions -- respiratory care not the practice of medicine. (1) Except as otherwise

provided in this chapter, a person may not practice respiratory care or represent to the public that the person is a respiratory care practitioner unless licensed under the provisions of this chapter.

(2) This chapter does not prohibit:

(a) the practice of respiratory care that is an integral part of study by a student respiratory care practitioner;

(b) self-care by a patient or the gratuitous care by a friend or family member who does not purport to be a respiratory care practitioner; or

(c) respiratory care rendered in the course of an emergency.

(3) This chapter is not intended to limit, preclude, or interfere with the practice of other persons and health care providers licensed by the appropriate agencies of the state of Montana.

(4) Student practitioners providing respiratory care may not receive payment for their services.

~~(4)~~-(5) This chapter may not be construed to permit the practice of medicine."

{Internal references to 37-28-201: None }

Section 14. Section 50-32-226, MCA, is amended to read:

"50-32-226. Specific dangerous drugs included in Schedule III. Schedule III consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name

designated, listed in this section.

(1) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system, including salts, isomers (whether optical, position, or geometric), and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (a) benzphetamine;
- (b) chlorphentermine;
- (c) clortermine; and
- (d) phendimetrazine.

(2) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant having a depressant effect on the central nervous system:

(a) any compound, mixture, or preparation containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs and one or more other active medicinal ingredients that are not listed in any schedule;

(b) any suppository dosage form containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs approved by the federal food and drug administration for marketing only as a suppository;

(c) any substance that contains any quantity of a derivative of barbituric acid or any salt of barbituric acid;

(d) chlorhexadol;

(e) lysergic acid;

(f) lysergic acid amide;

(g) methyprylon;

(h) sulfondiethylmethane;

(i) sulfonethylmethane;

(j) sulfonmethane; and

(k) tiletamine and zolazepam or any of their salts. A trade or other name for a tiletamine-zolazepam combination product is telazol. A trade or other name for tiletamine is 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. A trade or other name for zolazepam is 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e] [1,4]-diazepin-7(1H)-one, flupyrzapon.

(3) Nalorphine.

(4) Narcotic drugs. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following is a narcotic drug, including its salts calculated as the free anhydrous base or alkaloid in the following limited quantities:

(a) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(b) not more than 1.8 grams of codeine per 100 milliliters

or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(c) not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(d) not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(e) not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(f) not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(g) not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; or

(h) not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(i) any material, compound, mixture, or preparation containing any quantity of buprenorphine and its salts is included in this category.

(5) Anabolic steroids. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids, that promotes muscle growth. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances is an anabolic steroid, including salts, isomers, and salts of isomers whenever the existence of those salts of isomers is possible within the specific chemical designation:

- (a) boldenone;
- (b) chlorotestosterone, also known as 4-chlortestosterone;
- (c) clostebol;
- (d) dihydrochlormethyltestosterone;
- (e) dihydrotestosterone, also known as 4-dihydrotestosterone;
- (f) drostanolone;
- (g) ethylestrenol;
- (h) fluoxymesterone;
- (i) formebolone, also known as formebolone;
- (j) mesterolone;
- (k) methandienone;
- (l) methandranone;

- (m) methandriol;
- (n) methandrostenolone;
- (o) methenolone;
- (p) methyltestosterone;
- (q) mibolerone;
- (r) nandrolone;
- (s) norethandrolone;
- (t) oxandrolone;
- (u) oxymestrone;
- (v) oxymetholone;
- (w) stanolone;
- (x) stanozolol;
- (y) testolactone;
- (z) testosterone; or
- (aa) trenbolone."

{*Internal references to 50-32-226:*

37-20-404x	45-9-102x	45-9-106x	50-32-103x
50-32-206x	50-32-227x	50-32-306x	}

Section 15. Section 50-32-232, MCA, is amended to read:

"50-32-232. Specific dangerous drugs included in Schedule

V. Schedule V consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

~~(1) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or~~

~~preparation containing buprenorphine and its salts is included in this category.~~

~~(2)~~(1) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following is a narcotic drug, including its salts, calculated as the free anhydrous base or alkaloid in limited quantities as set forth in subsections (2)(a) through (2)(f), which include one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

(a) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(b) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(c) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(d) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(e) not more than 100 milligrams of opium per 100 milliliters or per 100 grams; and

(f) not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

~~(3)~~(2) Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of

pyrovalerone is a stimulant having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers."

{Internal references to 50-32-232:

37-20-404x 45-9-106x 50-32-103x 50-32-206x
50-32-306x}

Section 16. Section 50-32-314, MCA, is amended to read:

"50-32-314. Board to adopt rules for registration of ambulatory outpatient center for surgical facilities services.

(1) The board shall, by October 1, 1999, adopt rules to provide for the registration of ambulatory outpatient center for surgical facilities services pursuant to this part. The rules must categorize ambulatory outpatient center for surgical facilities services as a "distributor" pursuant to 50-32-101(12) or other category of registrant as determined by the board.

(2) If the board determines that ambulatory outpatient center for surgical facilities services require the services of a pharmacist in order to be registered, the board shall allow those facilities to use the services of a consulting pharmacist to satisfy the obligation imposed by the board.

(3) This section does not affect any existing requirement that persons providing dangerous drugs to an ambulatory outpatient center for surgical facility service or persons administering dangerous drugs within or as the result of procedures performed at an ambulatory outpatient center for

surgical-facility service be registered pursuant to this part."

{Internal references to 50-32-314:

71-3-1113 a }

Section 17. Section 46-18-111, MCA, is amended to read:

"46-18-111. Presentence investigation -- when required.

(1) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court shall consider the presentence investigation report prior to sentencing. If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-625, or 45-5-627, the investigation must include a psychosexual evaluation of the defendant and a recommendation as to treatment of the defendant in the least restrictive environment, considering the risk the defendant presents to the community and the defendant's needs, unless the defendant was sentenced under 46-18-219. The evaluation must be completed by a sex offender therapist who is a member of the Montana sex offender treatment association ~~or has comparable credentials acceptable to the department of labor and industry~~. The psychosexual evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be

indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

(2) The court shall order a presentence report unless the court makes a finding that a report is unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written presentence investigation report by a probation and parole officer is presented to and considered by the district court. The district court may order a presentence investigation for a defendant convicted of a misdemeanor only if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense as defined in 46-23-502.

(3) The defendant shall pay to the department of corrections a \$50 fee at the time that the report is completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time. The fee may be retained by the department and used to finance contracts entered into under 53-1-203(4)."

{Internal references to 46-18-111: None }

NEW SECTION. **Section 18. {Standard} Repealer.** Section 37-1-331, MCA, is repealed.

{Internal references:

37-1-331: 37-1-308 x }

Section 19. Section 2-15-1757, MCA, is amended to read:

"2-15-1757. Board of realty regulation. (1) There is a board of realty regulation.

(2) The board consists of ~~five~~ seven members appointed by the governor with the consent of the senate. ~~Three~~ Five members must be licensed real estate brokers or salespeople or property managers who are actively engaged in the real estate business as a broker ~~or~~ salesperson or property manager in this state. Two members must be representatives of the public who are not state government officers or employees and who are not engaged in business as a real estate broker or salesperson. The members must be residents of this state.

(3) Not more than ~~three~~ five members, including the presiding officer, may be from the same political party.

(4) The members shall serve staggered terms of 4 years. A member may not serve more than two terms or any portion of two terms.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

{Internal references to 2-15-1757:

x 37-51-102 x 37-53-102 }

Section 20. Section 37-51-102, MCA, is amended to read:

"37-51-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Account" means the real estate recovery account

established in 37-51-501.

(2) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that:

(i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; or

(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

(b) The term does not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony.

(3) "Board" means the board of realty regulation provided for in 2-15-1757.

(4) "Broker" includes an individual who:

(a) for another or for valuable consideration or who with the intent or expectation of receiving valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

(b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition of real estate for consideration;

(c) engages in the business of charging an advance fee or

contracting for collection of a fee in connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers;

(d) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(f) receives a fee, commission, or other compensation for referring to a licensed broker or salesperson the name of a prospective buyer or seller of real property; or

(g) advertises or represents to the public that the individual is engaged in any of the activities referred to in subsections (4)(a) through (4)(f).

(5) "Buyer" means a person who is interested in acquiring an ownership interest in real property or who has entered into an agreement to acquire an interest in real property. The term includes tenants or potential tenants with respect to leases or rental agreements of real property.

(6) "Buyer agent" means a broker or salesperson who,

pursuant to a written buyer broker agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent and an in-house buyer agent designate.

(7) "Buyer broker agreement" means a written agreement in which a prospective buyer employs a broker to locate real estate of the type and with terms and conditions as designated in the written agreement.

(8) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a buyer.

(9) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(10) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with written authorization, as provided in 37-51-314. An in-house buyer or seller agent designate may not be considered a dual agent.

(11) "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising

designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

(12) "In-house buyer agent designate" means a broker or salesperson employed by or associated as an independent contractor with a broker and designated by the broker as the exclusive agent for a buyer for a designated transaction and who may not be considered to be acting for other than the buyer with respect to the designated transaction.

(13) "In-house seller agent designate" means a broker or salesperson employed by or associated as an independent contractor with a broker and designated by the broker as the exclusive agent for a seller for a designated transaction and who may not be considered to be acting for other than the seller with respect to the designated transaction.

(14) "Listing agreement" means a written agreement between a seller and broker for the sale of real estate, with the terms and conditions set out in the agreement.

(15) "Negotiations" means:

(a) efforts to act as an intermediary between parties to a real estate transaction;

(b) facilitating and participating in contract discussions;

(c) completing forms for offers, counteroffers, addendums, and other writings; and

(d) presenting offers and counteroffers.

(16) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

(17) "Property manager" includes a person who for a salary, commission, or compensation of any kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate belonging to others without transfer of the title to the property, pursuant to 37-51-601 and 37-51-602.

(18) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

(19) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale, exchange, or lease of an interest in real estate and includes all communication, interposition, advisement, negotiation, and contract development and closing.

(20) "Salesperson" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(21) "Seller" means a person who has entered into a listing agreement to sell real estate and includes landlords who have an interest in or are a party to a lease or rental agreement.

(22) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

(23) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a seller.

(24) (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real estate transaction without acting as an agent or representative of any party to the real estate transaction.

(b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or has disclosed, as required in this chapter, a relationship other than that of a statutory broker."

(25) "Supervising broker" means a licensed broker with whom a licensed salesperson is associated, either directly, indirectly, regularly, or occasionally to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(26) "Supervising broker endorsement" means an endorsement to a broker license which is required of any licensed broker who supervises licensed salespersons performing real estate activity.

{Internal references to 37-51-102:

Section 21. Section 37-51-301, MCA, is amended to read:

37-51-301. License required -- limited to persons. (1) It is unlawful for a person to engage in or conduct, directly or indirectly, or to advertise or hold himself out as engaging in or conducting the business or acting in the capacity of a real estate broker or a real estate salesperson within this state without a license as a broker or salesperson or otherwise complying with this chapter.

(2) It is unlawful for a person to supervise licensed salespersons or to act in the capacity of a supervising broker unless the person has a valid and active Montana broker license and a supervising broker endorsement.

(3)~~(2)~~ Corporations, partnerships, and associations may not be licensed under this chapter. A corporation or a partnership may act as a licensee if every corporate officer and every partner performing the functions of a licensee is licensed under this chapter. All officers of a corporation or all members of a partnership acting as a licensee are in violation of this chapter unless there is full compliance with this subsection.

Section 22. Section 37-51-302, MCA, is amended to read:

"37-51-302. Broker or salesperson license --
qualifications of applicant - supervising broker endorsement.

(1) Licenses may be granted only to individuals considered by the board to be of good repute and competent to transact the business of a broker or salesperson in a manner as to safeguard the interests of the public.

(2) An applicant for a broker's license:

(a) must be at least 18 years of age;

(b) must have graduated from an accredited high school or completed an equivalent education as determined by the board;

(c) must have been actively engaged as a licensed real estate salesperson for a period of 2 years or have had experience or special education equivalent to that which a licensed real estate salesperson ordinarily would receive during this 2-year period as determined by the board, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesperson because of conditions existing in the area where the applicant resides, the board may waive this experience requirement;

(d) shall file an application for a license with the department; and

(e) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours, in addition to those required to secure a salesperson's license, in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law,

real estate finance, and related topics.

(3) The board shall require information it considers necessary from an applicant to determine honesty, trustworthiness, and competency.

(4) (a) An applicant for a salesperson's license:

(i) must be at least 18 years of age;

(ii) must have received credit for completion of 2 years of full curriculum study at an accredited high school or completed an equivalent education as determined by the board;

(iii) shall file an application for a license with the department; and

(iv) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law and ethics, real estate finance, and related topics.

(b) The application must be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect.

(5) The department shall issue to each licensed broker and to each licensed salesperson a license and a pocket card in a

form and size that the board prescribes.

(6) An applicant for a supervising broker endorsement must meet the education and experience requirements established by the board in rule."

{*Internal references to 37-51-302:*

x 37-51-204 }

NEW SECTION. **Section 23. Citation and fine for failure to comply with trust account requirements.** (1) A citation for failure to comply with trust account maintenance requirements may be issued by an employee of the department to a broker or property manager responsible for maintenance of a trust account. The citation must include:

- (a) the time and date on which the citation is issued;
 - (b) the name, address, mailing address, and signature of the person issuing the citation;
 - (c) reference to the statute(s) or rule(s) violated;
 - (d) the name, title, affiliation, and signature of the person issuing the citation;
 - (e) information explaining the procedure for the person to follow in order to pay the fine or dispute the violation(s); and
 - (f) the amount of the applicable fine.
- (2) The applicable civil fine for failure to comply with trust account maintenance requirements is \$50 for each cited violation.

(3) The person who issues the citation is authorized to collect the fine, but the person who is issued a citation may pay the fine or dispute the violation to the board within 5 business days of the date of issuance.

(4) A person who refuses to sign and accept a citation is demonstrating unprofessional conduct.

NEW SECTION. **Section 24. {Standard} Codification**

Instruction. Section 23 is intended to be codified as an integral part of Title 37, chapter 51, part 3, and the provisions of Title 37, chapter 51, part 3, apply to [section 23].

NEW SECTION. **Section 25. {Standard} Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 26. Section 76-2-411, MCA, is amended to read:

"76-2-411. Definition of community residential facility.

"Community residential facility" means:

(1) a community group home for developmentally, mentally, or severely disabled persons that does not provide skilled or intermediate nursing care;

(2) a youth foster home, a kinship foster home, a youth shelter care facility, a transitional living program, or youth

group home as defined in 52-2-602;

~~(3) a halfway house operated in accordance with regulations of the department of public health and human services for the rehabilitation of alcoholics or drug dependent persons;~~

~~(4)~~(3) a licensed adult foster family care home; or

~~(5)~~(4) an assisted living facility licensed under 50-5-227."

{Internal references to 76-2-411: None }

Section 27. Section 37-47-318, MCA, is amended to read:

"37-47-318. Fees in addition to annual license fee -- allocation. (1) In addition to the fees required in 37-47-306 for an outfitter providing hunting services, the following fees apply:

(a) An outfitter shall pay an annual fee of \$2 for each client served.

(b) An outfitter who is granted a net client hunter use expansion shall pay a fee of \$500 for each new client added to that outfitter's operations plan.

(c) An outfitter who operates hunting camps in more than one department of fish, wildlife, and parks administrative region shall pay an annual fee of \$5,000 for each camp that is located beyond a 100-mile radius of the outfitter's base of operations and that is in an administrative region other than the region containing the outfitter's base of operations. A fee

is not required for the following:

- (i) an outfitter's base of operations camp;
- (ii) camps established before January 1, 1999;
- (iii) camps established on public land when use is directly regulated by public land use policies; or
- (iv) camps on corporate timberlands where public access is not restricted.

(d) An outfitter who desires a net client hunter use expansion shall pay a nonrefundable fee of \$2,000 for each expansion request.

(2) Fees collected pursuant to this section must be expended by the board, pursuant to the authority in 37-47-306, and by the department of fish, wildlife, and parks, pursuant to the authority in 87-1-601, and used to fund administrative costs related to implementation of this chapter. The fees collected must be allocated as follows:

(a) Revenue generated by the \$2 fee imposed in subsection (1)(a) must be split equally between the board and the department of fish, wildlife, and parks.

(b) Revenue generated by the \$500 fee imposed in subsection (1)(b) must be ~~allocated between the board and the department of fish, wildlife, and parks in the following order:~~

~~—— (i) the amount necessary to cover the department's administrative expenses that exceed the revenue generated by subsection (2)(a); and~~

~~—— (ii) the remaining amount to be deposited in the state~~

~~special revenue fund to the credit of the board. Split equally~~
between the board and the department of fish, wildlife, and
parks.

(c) Revenue generated by the \$5,000 fee imposed in subsection (1)(c) must be deposited in the state special revenue fund to the credit of the board.

(d) Revenue generated by the \$2,000 fee imposed in subsection (1)(d) must be split equally between the board and the department of fish, wildlife, and parks."

{Internal references to 37-47-318: None }

Section 28. Section 37-47-341, MCA, is amended to read:

"37-47-341. Grounds for denial, suspension, or revocation of license. A license or right to apply for and hold a license issued under this part may be denied, suspended, or revoked or other disciplinary conditions may be applied upon any of the following grounds:

(1) having ceased to meet all of the qualifications for holding a license, as required under this chapter and rules adopted pursuant to this chapter;

(2) fraud or deception in procuring a license;

(3) fraudulent, untruthful, or misleading advertising;

(4) having pleaded guilty to or been adjudged by a court guilty of a felony, including a case in which the sentence is suspended or imposition of the sentence is deferred, unless civil rights have been restored pursuant to law. ~~A person may~~

~~not apply for or hold an outfitter's, guide's, or professional guide's license during any period of time in which a sentence for a felony has been deferred or suspended.~~

(5) one conviction or bond forfeiture as to a violation of the fish and game or outfitting laws or regulations of any state or the United States;

(6) a substantial breach of a contract with a participant provided that the breach is established as a matter of final judgment in a court of law;

(7) the willful employment of or contracting with an unlicensed guide or professional guide by an outfitter;

(8) negligence or misconduct while acting as an outfitter, guide, or professional guide that causes an accident or injury to the person or property of a participant;

(9) misconduct as defined by board rule; or

(10) any violation of this chapter or a rule adopted pursuant to this chapter."

{*Internal references to 37-47-341: None* }

NEW SECTION. Section 29. Publication of Licensee

Information. The department shall prepare and publish an information pamphlet that contains the names and addresses of all licensed outfitters. This pamphlet must be available for free distribution as early as possible each calendar year but not later than the second Friday in March of each such year. The pamphlet must contain the names, license numbers, and addresses of only those outfitters who have a currently valid

license.

NEW SECTION. **Section 30. {Standard} Codification**

Instruction. Sections 27, 28, and 29 are intended to be codified as an integral part of Title 37, chapter 47, part 2, and the provisions of Title 37, chapter 47, part 2, apply to sections 27, 28, and 29.

Section 31. Section 2-15-1781, MCA, is amended to read:

"2-15-1781. Board of private security ~~patrol officers and investigators~~. (1) There is a board of private security ~~patrol officers and investigators~~.

(2) The board consists of seven voting members appointed by the governor with the consent of the senate. The members shall represent:

(a) one contract security company or proprietary security organization, as defined by 37-60-101;

(b) ~~one proprietary security organization~~ electronic security company, as defined by 37-60-101;

(c) one city police department;

(d) one county sheriff's office;

(e) one member of the public;

(f) one member of the peace officers' standards and training advisory council; and

(g) a licensed private investigator.

(3) Members of the board must be at least 25 years of age and have been residents of this state for more than 5 years.

(4) The appointed members of the board shall serve for a term of 3 years. The terms of board members must be staggered.

(5) The governor may remove a member for misconduct, incompetency, neglect of duty, or unprofessional or dishonorable conduct.

(6) A vacancy on the board must be filled in the same manner as the original appointment and may only be for the unexpired portion of the term.

(7) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

{*Internal references to 2-15-1781:*

25-1-1104x 37-60-101a }

Section 32. Section 37-60-101, MCA, is amended to read:

"37-60-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Alarm response runner" means any individual employed by an electronic security company, a contract security company or a proprietary security organization to respond to security alarm system signals.

(2) "Alarm installer" means any individual employed by an electronic security company to install, service, or maintain security alarm systems.

(3) "Armed" means any individual who at any time wears, carries, or possesses a firearm in the performance of professional duties.

~~(2)~~(4) "Armed carrier service" means any person or company who transports or offers to transport under armed private security guard from one place to another any currency, documents, papers, maps, stocks, bonds, checks, or other items of value that require expeditious delivery.

~~(3)~~(5) "Armed private investigator" means a private investigator who at any time wears, carries, or possesses, ~~or has access to~~ a firearm in the performance of the individual's duties.

~~(4)~~(6) "Armed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a security guard, armored car service guard, or carrier service guard, ~~or alarm response runner~~ and who at any time wears or carries a firearm in the performance of the individual's duties.

~~(5)~~(7) "Armored car service" means any person or company who transports or offers to transport under armed private security guard from one place to another any currency, jewels, stocks, bonds, paintings, or other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.

~~(6)~~(8) "Board" means the board of private security ~~patrol officers and investigators~~ provided for in 2-15-1781.

~~(7)~~(9) "Branch office" means any office of a licensee within the state, other than its principal place of business

within the state.

(10) "Company" means electronic security company, proprietary security organization or contract security company.

~~(8)~~(11) "Contract security company" means any person or company who installs or maintains a security alarm system, undertakes to provide a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a contractual basis to another person or company who exercises no direction and control over the performance of the details of the services rendered.

~~(9)~~(12) "Department" means the department of labor and industry provided for in 2-15-1701.

(13) "Electronic security company" means any person or company who installs, services, or maintains a security alarm system, undertakes to hire, employ, and provide alarm response runners and alarm installers on a contractual basis to another person or company who exercises no direction and control over the performance of the services rendered.

(14) "Fire investigator" means a person other than an insurance adjuster who for any consideration whatsoever makes or agrees to make any investigation with reference to:

(a) fire investigations to identify evidence and determine causes of fires;

(b) investigating accidents pertaining to negligence or arson for criminal or civil action or testifying as an expert witness as required; or

(c) cooperating with law enforcement agencies in conducting fire investigations and collecting evidence relating to fires.

(15) "Firearms instructor" means a person who has been approved by the board to instruct classes in the use of weapons.

(16) "Firearms course" means the course approved by the board which will be given by a board-approved firearms instructor.

~~(10)~~(17) "Insurance adjuster" means a person employed by an insurance company, other than a private investigator, who for any consideration whatsoever conducts investigations in the course of adjusting or otherwise participating in the disposal of any claims in connection with a policy of insurance but who does not perform surveillance activities or investigate crimes ~~or wrongs committed or threatened~~ against the United States or any state or territory of the United States.

(18) "Levying officer" means the person or company who is directed to execute a writ of possession.

~~(11)~~(19) "Licensee" means ~~a~~ any person licensed under this chapter.

~~(12)~~(20) "Paralegal" or "legal assistant" means a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily but not exclusively performed by a lawyer and who may be retained or employed by one or more lawyers, law offices, governmental agencies, or other entities or who may be authorized by administrative, statutory, or court

authority to perform this work.

~~(13)~~(21) "Person" ~~includes~~ means any individual, firm, company, association, organization, partnership, ~~and~~ or corporation.

~~(14)~~(22) "Private investigator" means a any person other than an insurance adjuster who for any consideration whatsoever makes or agrees to make any investigation with reference to:

(a) crimes ~~or wrongs done or threatened~~ against the United States or any state or territory of the United States;

(b) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause or responsibility for ~~fires~~, libels, losses, accidents, or injury to persons or property; or

(e) ~~securing~~ gathering evidence to be used before any court, board, officer, or investigating committee.

~~(15)~~(23) "Private security guard" means an individual employed or assigned duties to protect a person or property or both a person and property from criminal acts and whose duties or any portion of whose duties include but are not limited to the prevention of unlawful entry, theft, criminal mischief, arson, or trespass on private property or the direction of the movements of the public in public areas.

(24) "Process server" means any person or company who serves a summons or other documents upon an opposing party.

~~(16)~~(25) "Proprietary security organization" means any person or company who employs a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a routine basis solely for the purposes of that person or company and exerts direction and control over the performance of the details of the service rendered.

~~(17) "Qualifying agent" means, in the case of a corporation, a corporate employee employed in a management capacity or, in the case of a partnership, a general or unlimited partner meeting the qualifications set forth in this chapter for the operation of a contract security company, proprietary security organization, or private investigator, whichever is applicable.~~

~~(18)~~(26) "Resident manager" means the person appointed to exercise direct supervision, control, charge, management, or operation of each branch office located in this state where the business of the licensee is conducted.

(27) "Security alarm installer" means any individual who installs, services, or maintains security alarm systems to detect and signal unauthorized intrusion, movement, break-in, or criminal acts and is employed by an electronic security company.

~~(19)~~(28)~~(a)~~ " Security alarm system" means an assembly of equipment and devices or a single device or portion of such a system, ~~such as a solid state unit that plugs directly into a~~

~~110-volt AC line, designed~~ intended to detect or signal or to both detect and signal unauthorized intrusion, movement, or criminal acts at a ~~protected premises location~~ and to which signals police, private security guards, or alarm response runners are expected to respond.

(b) The term does not include ~~alarm systems and alarm systems that monitor temperature, humidity, or any other atmospheric condition not directly related to the detection of an unauthorized intrusion or criminal act at a~~ premises location.

~~(20)~~(29) "Street patrol service" means any person or contract security company or proprietary security organization that uses foot patrols, motor vehicles, or any other means of transportation to maintain public order or detect criminal activities in public areas or thoroughfares providing patrols by means of foot, vehicle, or other method of transportation using public streets, thoroughfares or property in the performance of their duties and responsibilities.

~~(21)~~(30) "Unarmed private investigator" means a private investigator who does not wear, carry, or possess, ~~or have access to~~ a firearm in the performance of the individual's duties.

~~(22)~~(31) "Unarmed private security guard" means an individual who is employed by a contract security company or a proprietary security organization, whose duty or any portion of whose duty is that of a private security guard, armored car

service guard, or alarm response runner, and who does not wear, or carry, or possess a firearm in the performance of those duties."

{Internal references to 37-60-101:

2-15-1781x 2-15-1781x 37-60-105x 37-60-301x }

Section 33. Section 37-60-103, MCA, is amended to read:

"**37-60-103. Purpose.** The purpose of this chapter is to increase the levels of integrity, competency, and performance of ~~private-security personnel~~ companies and their employees who are required to be licensed, firearms instructors, fire investigators, and private investigators in order to safeguard the public health, safety, and welfare against illegal, improper, or incompetent actions committed by ~~private~~ security personnel, firearms instructors, fire investigators, or private investigators."

{Internal references to 37-60-103: None }

Section 34. Section 37-60-202, MCA, is amended to read:

"**37-60-202. Rulemaking power.** The board shall adopt and enforce rules:

(1) fixing the qualifications of resident managers, ~~qualifying agents,~~ licensees, and holders of identification cards, in addition to those prescribed in this chapter, necessary to promote and protect the public welfare;

(2) establishing, in accordance with 37-1-134, application

fees for original ~~or renewal~~ licenses and identification cards, and providing for refunding of any fees;

(3) (a) prohibiting the establishment of branch offices of any licensee, ~~except a proprietary security organization,~~ without approval by the board; and

(b) establishing qualification requirements and license fees for branch offices identified in subsection (3)(a);

(4) for the certification of private investigator, and private security guard, alarm installer, and alarm response runner training programs, including the certification of firearms training programs;

(5) for the licensure of firearms instructors;

(6) for the approval of weapons;

(7) requiring the maintenance of records;

(8) requiring licensees to file an insurance policy with the board; and

(9) providing for the issuance of probationary identification cards for private investigators and alarm installers who do not meet the requirements for age, employment experience, ~~and~~ or written examination."

{Internal references to 37-60-202: None }

Section 35. Section 37-60-301, MCA, is amended to read:

"37-60-301. License required. (1) Except as provided in 37-60-105 and 37-60-315, it is unlawful for any person or company to act as or perform the duties, as defined in 37-60-

101, of a contract security company, ~~or~~ proprietary security organization, electronic security company, branch office, a private investigator, fire investigator, security alarm installer, alarm response runner, resident manager, certified firearms instructor, or a private security guard without having first obtained a license from the board. Those persons licensed on April 18, 1983, shall retain their current licensure status and shall renew their licenses on the renewal date as prescribed by the department.

(2) It is unlawful for any unlicensed person or company to act as, pretend to be, or represent to the public that the person or company is licensed as a private investigator, fire investigator, resident manager, a contract security company, a proprietary security organization, electronic security company, branch office, security alarm installer, alarm response runner, certified firearms instructor, or a private security guard.

(3) A person appointed by the court as a confidential intermediary under 42-6-104 is not required to be licensed under this chapter. A person who is licensed under this chapter is not authorized to act as a confidential intermediary, as defined in 42-1-103, without meeting the requirements of 42-6-104.

(4) A person who knowingly engages an unlicensed private investigator, fire investigator, resident manager, private security guard, certified firearms instructor, security alarm installer, alarm response runner, electronic security company, or contract security company is guilty of a misdemeanor

punishable under 37-60-411."

{Internal references to 37-60-301:

45-5-223x }

Section 36. Section 37-60-302, MCA, is amended to read:

"37-60-302. ~~Qualifying agent and r~~ Resident manager required -- substitution. (1) Any ~~out-of-state contract security company, electronic security company,~~ or proprietary security organization that applies for a license under this chapter shall, ~~before application to the board,~~ appoint for the duration of the license a ~~qualifying agent and~~ a resident manager. Every ~~qualifying agent and~~ resident manager shall satisfy the appropriate licensing requirements of this chapter.

(2) A separate resident manager must be appointed for each branch office located in this state, and the business of the applicant or licensee must be conducted under the resident manager's direct supervision and control.

(3) If a ~~qualifying agent or~~ resident manager for any reason ceases to perform the duties of a ~~qualifying agent or~~ resident manager on a regular basis, the licensee shall promptly notify the board of that fact ~~and of the name of a substitute individual, who shall apply to the board for continuation of the license. Pending application by and board action upon the application of the substitute, the board may suspend the license or extend it for a reasonable time."~~

{Internal references to 37-60-302: None }

Section 37. Section 37-60-303, MCA, is amended to read:

"37-60-303. License qualifications. (1) Except as provided in subsection (7), an applicant for licensure under this chapter is subject to the provisions of this section and shall submit evidence under oath that the applicant:

(a) is at least 18 years of age;

(b) is a citizen of the United States or be a legal permanent resident of the United States;

(c) has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted;

(d) has not been judicially declared incompetent by reason of any mental defect or disease or, if so declared, has been fully restored;

(e) is not suffering from habitual drunkenness or from narcotics addiction or dependence;

(f) is of good moral character; and

(g) has complied with other experience qualifications as may be set by the rules of the board.

(2) In addition to meeting the qualifications in subsection (1), an applicant for licensure as a private security guard, security alarm installer, or alarm response runner shall:

(a) complete the training requirements of a ~~private security guard~~ training program certified by the board and

provide, on a form prescribed by the board, written notice of satisfactory completion of the training; and

(b) fulfill other requirements as the board may by rule prescribe.

(3) In addition to meeting the qualifications in subsection (1), each applicant for a license to act as a private investigator shall submit evidence under oath that the applicant:

(a) is at least 21 years of age;

(b) has at least a high school education or the equivalent;

(c) has not been dishonorably discharged from any branch of the United States military service; and

(d) has fulfilled any other requirements as the board may by rule prescribe.

(4) The board may require an applicant to demonstrate by written examination additional qualifications as the board may by rule require.

(5) An applicant who will wear or carry a firearm in performance of the applicant's duties shall submit written notice of satisfactory completion of a firearms training program certified by or satisfactory to the board, as the board may by rule prescribe.

(6) Except for an applicant subject to the provisions of subsection (7), the board shall require a background investigation of each applicant for licensure under this chapter

that includes a fingerprint check by the Montana department of justice and the federal bureau of investigation.

(7) (a) A firm, company, association, partnership, limited liability company, corporation, or other entity that intends to engage in business governed by the provisions of this chapter must be incorporated under the laws of this state or qualified to do business within this state and must be licensed by the board.

(b) Individual employees, officers, directors, agents, or other representatives of an entity described in subsection (7)(a) who engage in duties that are subject to the provisions of this part must be licensed pursuant to the requirements of this part."

{Internal references to 37-60-303:

37-60-304a 37-60-315a 37-60-409x }

Section 38. Section 37-60-304, MCA, is amended to read:

"37-60-304. Licenses -- application form and content. (1)

~~Except as provided in 37-60-303(7), a~~ An application for a license must be submitted to the department and accompanied by the application fee set by the board.

(2) An application must be made under oath and must include:

(a) the full name and address of the applicant;

(b) the name under which the applicant intends to do business;

(c) a statement as to the general nature of the business in which the applicant intends to engage;

(d) a statement as to whether the applicant desires to be licensed as a contract security company, a proprietary security organization, electronic security company, branch office, certified firearms instructor, a private investigator, fire investigator, security alarm installer, alarm response runner, resident manager, or a private security guard;

(e) one recent photograph of the applicant, of a type prescribed by the department, and one classifiable set of the applicant's fingerprints;

(f) a statement of the applicant's age and experience qualifications; and

(g) other information, evidence, statements, or documents as may be prescribed by the rules of the board.

(3) The board shall verify the statements in the application ~~and the applicant's moral character.~~

(4) The submittal of fingerprints is a prerequisite to the issuance of a license by means of fingerprint checks by the Montana department of justice and the federal bureau of investigation."

{Internal references to 37-60-304: None }

Section 39. Section 37-60-309, MCA, is amended to read:

"37-60-309. Form of license and identification cards. The license, and identification card, ~~and temporary identification~~

~~card for temporary security guards~~ must be in a form determined by the board."

{Internal references to 37-60-309: None }

Section 40. Section 37-60-310, MCA, is amended to read:

"37-60-310. Display of license and identification card.

(1) A license must at all times be posted in a conspicuous place in the principal place of business of the licensee.

(2) A holder of an identification card ~~or a temporary identification card~~ shall carry the card while performing the cardholder's duties. A peace officer of this state or any of its political subdivisions may request to see the card at any reasonable time, and the card must be shown."

{Internal references to 37-60-310: None }

Section 41. Section 37-60-314, MCA, is amended to read:

"37-60-314. Nontransferability of license -- record changes. (1) No license issued under this chapter is transferable.

(2) A licensee shall notify the board within 5 days of any change in its officers, ~~or directors,~~ name change, change of address, employment, or other material change in the information previously furnished or required to be furnished to the board or any other material change or occurrence that could reasonably be expected to affect the licensee's right to a license. Upon such change or occurrence, the board may suspend or revoke the

license or may allow the business to be carried on for a temporary period under terms and conditions as the board may require.

(3) This section may not be applied to restrict the sale of a business if the buyer qualifies for a license under the provisions of this chapter."

{Internal references to 37-60-314: None }

Section 42. Section 37-60-315, MCA, is amended to read:

"37-60-315. Temporary security guard may work under licensee -- record and temporary identification card required.

(1) This chapter does not prohibit a person from working as a temporary private security guard if:

(a) the person is not employed by a licensed private security guard for more than 30 consecutive days or for more than 30 days in a calendar year; and

(b) the person does not wear, carry, possess, or have access to a firearm in the performance of the person's duties until a background check on the person has been completed by the board and the board is satisfied that the person has met the qualifications specified in 37-60-303(5).

(2) The licensee shall file with the department:

(a) a completed application for licensure for the person within 5 days of hiring the person to work as a temporary security guard, to allow the department to conduct an in-state background check;

(b) a quarterly report accurately documenting the total number of days or hours and in what capacity each person has been employed during each calendar year; and

(c) notice that a temporary security guard has been terminated within 5 days of the termination date.

(3) The department shall keep a record of the name and address of each person working as a temporary security guard until the person's employment with a licensee is terminated.

(4) Within 2 days of receiving the results of the in-state background check for a temporary security guard, the department shall issue a temporary identification card to the temporary security guard. The temporary identification card must contain the information prescribed by the board by rule.

(5) A licensee who assigns a temporary security guard to a business shall notify the business that a background check may not have been completed on the temporary security guard."

{*Internal references to 37-60-315:*

37-60-301a }

Section 43. Section 37-60-402, MCA, is amended to read:

"37-60-402. Confidentiality of information -- false reports -- badges and uniforms -- illegal entry. (1) A licensee or officer, director, partner, or manager of a licensee may divulge to any law enforcement officer or county attorney or his representative any information he may acquire as to any criminal offense, but he may not divulge to any other person, except as

required by law, any information acquired by him except at the direction of the employer or client for whom the information was obtained.

(2) No licensee or officer, director, partner, manager, or employee of a licensee may knowingly make any false report to his employer or client for whom information was being obtained.

(3) No written report may be submitted to a client except by the licensee, ~~qualifying manager~~, or a person authorized by ~~either of them~~ the licensee, and the person submitting the report shall exercise diligence in ascertaining whether or not the facts and information in the report are true and correct.

(4) No licensee or officer, director, partner, manager, or employee of a licensee may use a title, wear a uniform, use an identification card, or make any statement with the intent to give an impression that ~~he~~ the licensee is connected in any way with the federal government, a state government, a law enforcement agency, or any political subdivision of a state government, unless the licensee has a contract with the agency.

(5) No licensee or officer, director, partner, manager, or employee of a licensee may enter any private building or portion thereof without the consent of the owner or of the person in legal possession thereof."

{Internal references to 37-60-402: None }

Section 44. Section 37-60-403, MCA, is amended to read:

"37-60-403. Licensee advertising. Every advertisement by a

licensee soliciting or advertising business shall contain ~~his~~
the name, and address, and license number of the licensee as
they appear in the records of the board."

{Internal references to 37-60-403: None }

Section 45. Section 37-60-406, MCA, is amended to read:

"37-60-406. Peace officer's casual employment. A peace officer, as defined in 46-1-202, or a reserve officer, as defined in 7-32-201, is not prohibited or restricted from accepting and engaging in employment as a security guard during his off-duty hours, provided that he does not advertise his services or solicit employment and further provided that the chief of his department previously approves the off-duty employment. A peace officer or reserve officer engaged in casual employment is exempt from the provisions of this chapter only if the casual employment is authorized in writing by his sheriff or chief of police."

{Internal references to 37-60-406: None }

Section 46. Section 37-60-409, MCA, is amended to read:

"37-60-409. Installation of new security alarm systems by electrician. An electrician who has received a license from the department pursuant to 37-68-301 may install new security alarm systems under the direction of a ~~journeyman~~ licensed security alarm installer, ~~but~~ and such work performed by an electrician is subject to inspection and approval by a security alarm

installer licensed under 37-60-303."

{*Internal references to 37-60-409: None* }

NEW SECTION. **Section 47. {Standard} Repealer.** Sections 37-60-315 and 37-60-406, MCA, are repealed.

{Internal references:

37-60-315:

37-60-301a

37-60-406: None }

Section 48. Section 37-69-101, MCA, is amended to read:

A37-69-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of plumbers provided for in 2-15-1765.

(2) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(3) "Drainage system" means all the piping inside the walls of a building that conveys sewage or other liquid wastes outside the building to the building sewer but that does not extend more than 2 feet outside the building way.

(4) "Field of plumbing" means the business, trade, or work having to do with the installation, removal, alteration, or repair of plumbing and drainage systems or parts of plumbing and drainage systems.

(5) "Journeyman plumber" means a person who is authorized to make installation of all sanitary plumbing and potable water

supply piping and appliances connected to the plumbing and piping.

(6) "Master plumber" means a person who is authorized by this chapter to plan, estimate, bid, contract for, and supervise plumbing work and who may do the work of a journeyman plumber.

(7) (a) "Plumbing system" means all potable water supply and distribution pipes, plumbing fixtures and traps, drainage and vent pipes, and building drains, including their respective joints and connections, devices, receptacles, and appurtenances within the property lines of any premises, up to 20 feet beyond the building foundation line, and includes potable water piping, water heaters, and vents for the premises.

(b) The term does not include water services installed and maintained by water districts or water user associations in which water service is installed by any qualified person appointed or hired by the administrative authority of the water system.

(8) APlumbing Contractor@ means a person, firm, partnership, corporation, association, or combination of these entities that undertakes or offers to undertake for another the planning, laying out, supervising, and installing or the making of additions, alterations, and repairs in the installation, removal, alteration, or repair of plumbing and drainage systems or parts of plumbing and drainage systems. A licensed engineer who plans or designs plumbing installations is not a plumbing contractor.

~~(8)~~(9) "Public sewer system" means any common sewer carrying liquid wastes from two or more dwellings or any other facility that serves the public.

~~(9)~~(10) "Public water supply" means any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that serves 10 or more families or 25 or more persons on a regular and continuous basis.@
{Internal references to 37-69-101: None }

Section 49. Section 37-69-301, MCA, is amended to read:

A37-69-301. License required. (1) Except as provided in 37-69-102, ~~a person working at the field of plumbing in this state, either as a master plumber or as a journeyman plumber, shall first obtain a license as provided in Title 37, chapter 69, part 3.~~ May not engage in or work at the business, trade, or

calling of plumbing contractor, journeyman plumber, or master plumber in this state until the person has received from the department a license or permit to work as a plumbing contractor, journeyman plumber, or a master plumber.

(2) A person who receives a license under the provisions of this chapter shall carry the license, or proof of licensure, at all times while working on a job site and performing work that requires a license. Acceptable proof of licensure must be determined by the board and made known by the department to each licensee when a license is issued.

(3) A private or public employment agency or labor union, or an employee thereof, who refers persons for employment by others may not refer a person for employment by others to perform the work of a plumbing contractor, journeyman plumber, or master plumber in this state unless the person has received from the department a license or permit to work as a plumbing contractor, journeyman plumber, or master plumber.@

{Internal references to 37-69-301: None }

Section 50. Section 37-69-303, MCA, is amended to read:

A37-69-303. Application -- contents -- requirements. (1) A person, firm, or corporation desiring to engage in or work in the field of plumbing in this state, either as a master plumber or as a journeyman plumber, shall make application to the

department by filing a written application stating his place of residence, age, experience, and the place where he has acquired his experience and shall at a time and place designated by the board be examined as to his qualifications for a license.

(2) A person, firm, or corporation desiring to engage in or work in the field of plumbing in this state as a plumbing contractor, shall make application to the department by filing a written application stating his or her place of residence, age, proof of workers compensation coverage as required by section 39-51-101, MCA, unemployment insurance coverage as required @
{Internal references to 37-69-303: None }

Section 51. Section 37-69-304, MCA, is amended to read:

A37-69-304. Qualifications of applicants for journeyman plumber's license -- restriction on authority. (1) The following requirements must be met by applicants for a journeyman plumber's license:

(a) a specific record of 5 years of legally obtained experience in the field of plumbing. This experience requirement may be fulfilled by working 5 years in a major phase of the plumbing business, verified by time or pay records, or by completing an apprenticeship program meeting the standards set by the department or the United States department of labor, bureau of apprenticeship, or credit towards this experience

requirement may be given for time spent attending an accredited trade or other school specializing in training of value in the field of plumbing and approved by the board.

(b) satisfactory completion of an examination prescribed by the board conducted by the department, subject to 37-1-101(4), testing the applicant's knowledge of techniques and methods employed in the field of plumbing and establishing by practical demonstration competence in the special skills required in the field of plumbing.

(2) A licensed journeyman plumber may perform work only in the employment of a licensed ~~master plumber~~ plumbing contractor unless otherwise permitted by rule of the board. @

{*Internal references to 37-69-304: None* }

Section 52. Section 37-69-305, MCA, is amended to read:

A37-69-305. Qualifications of applicants for master plumber's license -- restriction on authority. (1) The following requirements must be met by an applicant for a master plumber's license:

(a) evidence of 4 years of experience as a licensed journeyman plumber in the field of plumbing, verified by time or pay records of actual plumbing experience;

(b) evidence of 3 years of experience working with a licensed master plumber or in a supervisory capacity in the field of plumbing, which may run concurrently with the requirement in subsection (1)(a); and

(c) satisfactory completion of an examination prescribed by the board for master plumbers testing the applicant's knowledge of the field of plumbing and demonstrating skill and ability in the field of plumbing.

(2) For purposes of subsection (1), 1 year of experience is 1,500 hours or more of work in a continuous 12-month period.

~~(3) A master plumber may not allow the master plumber's license to be used by any person or firm, corporation, or business other than the master plumber's own for the purpose of obtaining permits or for doing plumbing work under the license.@~~
{Internal references to 37-69-305: None }

Section 53. Section 37-69-306, MCA, is amended to read:

A37-69-306. Examination -- issuance of license. (1) An applicant for a license to work in the field of plumbing must be examined as to the applicant's qualifications by the department, subject to 37-1-101(4). The department shall examine each applicant for a license to determine the applicant's skill and qualifications as a master plumber or journeyman plumber.

(2) The applicant must, upon successfully passing an examination prescribed by the board, be issued a license authorizing the applicant to engage in the field of plumbing as a master plumber or journeyman plumber in the state of Montana.

~~(3) In the case of a firm or corporation, the examination and issuance of a license to an individual of the firm or to a principal of the firm or corporation satisfies the requirements of this chapter as to master plumbers but not as to journeyman plumbers. An individual, firm, or corporation may not do the work of a master plumber unless licensed under this chapter.~~

~~(4)~~(3) In addition to the temporary permits authorized in 37-1-305, the board may, on a case-by-case basis at the board's discretion in accordance with criteria determined by the board, renew a temporary practice permit for a person who fails the first license examination for which the person is eligible.@"

{Internal references to 37-69-306:

37-1-305x }

Section 54. Section 37-69-323, MCA, is amended to read:

A37-69-323. Restrictions on and responsibility for employees of master plumber. A licensed ~~master plumber~~ plumbing contractor may employ only apprentice plumbers registered with the state department of labor and industry and only journeyman and master plumbers who are licensed by the state of Montana. A

The master plumber of record is responsible for assuring that all work performed by such employees is in compliance with the state plumbing code.@

{Internal references to 37-69-323: None }

Section 55. Section 37-73-208, MCA, is amended to read:

A37-73-208. Elevator inspector's license. (1) A person intending to engage in work as an elevator inspector shall apply for a license as an elevator inspector on forms provided by the department.

(2) The department may not grant an applicant an elevator inspector's license unless the applicant demonstrates that the applicant meets the current national standards for the qualifications of elevator inspectors. The department shall designate by rule the national standards that must be met by an applicant.

(3) A newly hired elevator inspector who is not properly certified may conduct inspections for up to 6 months under a temporary license providing that the elevator inspector is supervised during the 6 month period of temporary licensure by appropriately certified personnel.@

{Internal references to 37-73-208: None }

Section 56. Section 50-76-102, MCA, is amended to read:

A50-76-102. Crane or Hoisting engine license required.

(1) (a) It is unlawful for a person to operate any tower, any crane with a manufacturer=s load chart rating of 6 tons or more, or any hoisting engine driven by any power when used in lowering or hoisting personnel or material in industrial operations or on construction projects without first obtaining a license from the department.

(b) In emergencies under 50-74-317 relating to the employment of unlicensed engineers, the provisions of that section apply to the operation of the engines and machinery named in this section.

~~(2) First class hoisting engineers must be licensed to operate hoisting engines driven by any power and unlimited horsepower used in the lowering or hoisting of personnel or material in industrial operations or on construction projects.~~

~~(3) Second class hoisting engineers must be licensed to operate hoisting engines driven by any power and not in excess of 100 brake horsepower used in the lowering or hoisting of personnel or material in industrial operations or on construction projects.~~

~~(4) The provisions of this section do not apply to hoists and cranes defined in 50-76-103.@~~

{Internal references to 50-76-102:

50-76-107x 50-76-109x }

NEW SECTION. **Section 57. Emeritus status.** (1) A licensee who no longer practices architecture may apply to the department for emeritus status.

(2) Upon receiving an application for emeritus status accompanied by the fee established by the board, the department shall issue a license of emeritus status to the applicant and record the applicant=s name in the appropriate database as a emeritus licensee, along with the date on which the licensee received emeritus status.

(3) An emeritus licensee may retain but may not use the licensee=s seal and may not practice architecture.

(4) The department shall reissue an active license to an emeritus licensee who pays all application fees, meets all current requirements for licensure, and demonstrates to the board=s satisfaction that for the 2 years preceding the application for active licensure, the applicant has met requirements set by the board for maintaining professional competence.

NEW SECTION. **Section 58. Plumbing contractors license - application - fees.** (1) Each plumbing contractor shall, on or before the date set by the department=s administrative rules, file with the department, an application together with the

appropriate fees for each firm operated by the plumbing contractor in Montana.

NEW SECTION. **Section 59. Retirement license.** (1) A licensee who no longer practices plumbing may apply to the department for retirement status.

(2) Upon receiving an application for retirement status accompanied by the fee established by the board, the department shall issue a license of retirement status to the applicant and record the applicant=s name in the appropriate database as a retired licensee, along with the date on which the licensee received retirement status.

(3) A retired licensee may not practice plumbing.

(4) The department shall reissue an active license to a retired licensee who pays the appropriate active license renewal fee.

NEW SECTION. **Section 60. Unprofessional conduct.** (1) In addition to the unprofessional conduct listed in section 37-1-410, MCA, applicable to programs without a board, the following are considered unprofessional conduct under this section:

(a) addiction to or dependency on a habit-forming drug or controlled substance as defined in Title 50, Chapter 32, MCA, as a result of illegal use of the drug or controlled substance;

(b) use of a habit-forming drug or controlled substance as defined in Title 50, Chapter 32, MCA, to the extent that the use impairs the user physically or mentally;

(c) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(d) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent then from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(e) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license; and

(f) conduct that does not meet generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring during the scope and course of the practice is considered conclusive evidence of

but is not intended to prove conduct that does not meet generally accepted standards.

NEW SECTION. **Section 61. Unprofessional conduct.** (1) In addition to the unprofessional conduct listed in section 37-1-410, MCA, applicable to programs without a board, the following are considered unprofessional conduct under this section:

 (a) addiction to or dependency on a habit-forming drug or controlled substance as defined in Title 50, Chapter 32, MCA, as a result of illegal use of the drug or controlled substance;

 (b) use of a habit-forming drug or controlled substance as defined in Title 50, Chapter 32, MCA, to the extent that the use impairs the user physically or mentally;

 (c) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

 (d) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent then from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(e) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee=s license; and

(f) conduct that does not meet generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring during the scope and course of the practice is considered conclusive evidence of but is not intended to prove conduct that does not meet generally accepted standards.

NEW SECTION. **Section 62. Unprofessional conduct.** (1) In addition to the unprofessional conduct listed in section 37-1-410, MCA, applicable to programs without a board, the following are considered unprofessional conduct under this section:

(a) addiction to or dependency on a habit-forming drug or controlled substance as defined in Title 50, Chapter 32, MCA, as a result of illegal use of the drug or controlled substance;

(b) use of a habit-forming drug or controlled substance as defined in Title 50, Chapter 32, MCA, to the extent that the use impairs the user physically or mentally;

(c) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(d) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent then from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to s person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(e) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee=s license; and

(f) conduct that does not meet generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring during the scope and course of the practice is considered conclusive evidence of but is not intended to prove conduct that does not meet generally accepted standards.

NEW SECTION. **Section 63. Unprofessional conduct.** (1) In addition to the unprofessional conduct listed in section 37-1-410, MCA, applicable to programs without a board, the following are considered unprofessional conduct under this section:

(a) addiction to or dependency on a habit-forming drug or controlled substance as defined in Title 50, Chapter 32, MCA, as a result of illegal use of the drug or controlled substance;

(b) use of a habit-forming drug or controlled substance as defined in Title 50, Chapter 32, MCA, to the extent that the use impairs the user physically or mentally;

(c) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(d) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent then from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(e) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license; and

(f) conduct that does not meet generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an

action involving an act or omission occurring during the scope and course of the practice is considered conclusive evidence of but is not intended to prove conduct that does not meet generally accepted standards.

NEW SECTION. **Section 64. Qualification of Applicants for first class crane and hoist engineer license - fees - third party services.** (1) The following requirements must be met by an applicant for a first-class crane and hoist engineer license, except as provided in 50-76-113, MCA:

- (a) at least 18 years of age;
- (b) evidence of one year of experience under the direct supervision of a licensed operator in this classification on equipment requiring a second-class crane and hoist engineer operator license or higher;
- (c) a biennial physical examination;
- (d) satisfactory completion of an examination for first-class crane and hoist engineer testing the applicant=s knowledge, skill, and ability required as a first-class crane and hoist engineer operator.

NEW SECTION. **Section 65. Qualification of Applicants for second-class crane and hoist engineer license - fees - third party services.** (1) The following requirements must be met by an applicant for a second-class crane and hoist engineer license, except as provided in 50-76-113, MCA:

(a) at least 18 years of age;

(b) evidence of one year of experience under the direct supervision of a licensed operator in this classification on equipment requiring a second-class crane and hoist engineer operator license or higher;

(c) a biennial physical examination;

(d) satisfactory completion of an examination for second-class crane and hoist engineer testing the applicant=s knowledge, skill, and ability required as a second-class crane and hoist engineer operator.

NEW SECTION. **Section 66. Qualifications of applicants for third-class crane and hoist engineer license - fees - third party services.** (1) The following requirements must be met by an applicant for a third-class crane and hoist engineer license:

(a) at least 18 years of age;

(b) satisfactory completion of an examination for a third-class crane and hoist engineer testing the applicant=s knowledge, skill, and ability required as a third-class crane and hoist engineer operator.

NEW SECTION. **Section 67. Unprofessional conduct.** (1) In addition to the unprofessional conduct listed in section 37-1-410, MCA, applicable to programs without a board, the following are considered unprofessional conduct under this section:

(a) addiction to or dependency on a habit-forming drug or controlled substance as defined in Title 50, Chapter 32, MCA, as a result of illegal use of the drug or controlled substance;

(b) use of a habit-forming drug or controlled substance as defined in Title 50, Chapter 32, MCA, to the extent that the use impairs the user physically or mentally;

(c) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(d) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent then from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(e) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license; and

(f) conduct that does not meet generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an

action involving an act or omission occurring during the scope and course of the practice is considered conclusive evidence of but is not intended to prove conduct that does not meet generally accepted standards.

NEW SECTION. **Section 68. {Standard} Repealer.** Section 50-76-103, MCA, is repealed.

{Internal references:

50-76-103:

50-76-102x 50-76-107x 50-76-109x }

NEW SECTION. **Section 69. {Standard} Effective date.** [This act] is effective on October 1, 2007.

NEW SECTION. **Section 70. {Standard} Codification**
Instruction. [Section 57] is intended to be codified as an integral part of Title 37, chapter 65, part 1, and the provisions of Title 37, chapter 65, part 1, apply to [section 57].

NEW SECTION. **Section 71. {Standard} Codification**
Instruction. [Sections 58 and 59] are intended to be codified as an integral part of Title 37, chapter 69, part 3, and the provisions of Title 37, chapter 69, part 3, apply to [sections 58 and 59].

NEW SECTION. **Section 72. {Standard} Codification**
Instruction. [Section 60] is intended to be codified as an integral part of Title 37, chapter 72, part 1, and the

provisions of Title 37, chapter 72, part 1, apply to [section 60].

NEW SECTION. **Section 73. {Standard} Codification**

Instruction. [Section 61] is intended to be codified as an integral part of Title 37, chapter 73, part 2, and the provisions of Title 37, chapter 73, part 2, apply to [section 61].

NEW SECTION. **Section 74. {Standard} Codification**

Instruction. [Section 62] is intended to be codified as an integral part of Title 50, chapter 39, part 1, and the provisions of Title 50, chapter 39, part 1, apply to [section 62].

NEW SECTION. **Section 75. {Standard} Codification**

Instruction. [Section 63] is intended to be codified as an integral part of Title 50, chapter 74, part 3, and the provisions of Title 50, chapter 74, part 3, apply to [section 63].

NEW SECTION. **Section 76. {Standard} Codification**

Instruction. [Sections 64, 65, 66 and 67] are intended to be codified as an integral part of Title 50, chapter 76, part 1, and the provisions of Title 50, chapter 76, part 1, apply to [sections 64, 65, 66 and 67].

NEW SECTION. **Section 77. {Standard} Effective date.**

[This act] is effective October 1, 2007.

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